

REMARKS/ARGUMENTS

Favorable reconsideration of the above-identified patent application, in light of the above amendments and the following remarks is respectfully requested. The presently pending claims are claims 1-7, 12, 14-20, and 24. Claims 1-7, 12, 14-20, and 24 has been amended. Claims 8-11, 13, and 21-23 have been canceled.

In the Office Action, the Examiner rejected claims 13-24 under 35 U.S.C. 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regard as the invention. The Examiner stated that line 3 of claim 13 and lines 7 and 10 of claim 24, the step "infecting the computer by a computer virus" renders the claim indefinite. In response, the Applicant has amended claim 24 to correct the indefiniteness of this claim. Claim 13 has been canceled.

In the Office Action, the Examiner rejected claims 1-22 and 24 under 35 U.S.C. 102(b) as being unpatentable by "Viruses and Forged Faxes Now Get Insurance Protection" (Newsbytes). The Examiner stated that Newsbytes teaches a system for insuring a customer having a computer against damage caused by a computer virus.

In response, the Applicant has amended independent claims 1-7, 12, 14-20 and 24 to better differentiate Applicant's invention from the cited reference. Newsbytes discloses that Lloyds Insurance of London has extended its insurance policies to include virus programs. In addition Newsbytes discloses that the insurance would cover the transfer and delivery of funds and property and the destruction of electronic data.

The Applicant's invention, on the other hand provides a system and method for repairing a computer if the computer is infected with a computer virus. Newsbytes does not disclose providing a repair of the infected system, merely a provision of insuring against viruses. There is no disclosure of repairing the infected machine, merely providing insurance. Lloyds of London is an insurance company that is well known to provide insurance in a wide range of areas for an insured party. The insurance always takes the form of compensation to the insured. Lloyds of London does not provide insurance by repairing a damaged item, rather Lloyds of London provides a monetary compensation of the damaged item. The Applicant's invention provides a system and method of repairing the infected system.

For prior art to anticipate under Section 102, every element of the claimed invention must be identically disclosed, either expressly or under principles of inherency, in a single reference. *Corning Glass Works v. Sumitomo Electric*, 9 U.S. P.Q. 2d 1962, 1965 (Fed. Cir. 1989). The exclusion of a claimed element, no matter how insubstantial or obvious, from a prior art reference is enough to negate anticipation. *Cornell v. Sears, Roebuck & Co.*, 220 U.S.P.Q. 193, 198 (Fed. Cir., 1983). Newsbytes does not disclose *repairing the infected computer*. In regards to inherency, inherency may be relied upon where, but only where, the consequence of following the reference disclosure always inherently produces or results in the claimed invention. *W.L. Gore Associates, Inc. v. Garlock, Inc.*, 220 U.S.P.Q. 303-313 (Fed. Cir., 1983). If there is not a reasonable certainty that the claimed subject matter will necessarily result, the rejection fails. Newsbytes merely discloses that Lloyds of London provides insurance against viruses without any more detail on implementation of the insurance. *In re Brink*, 164 U.S.P.Q. 247 (CCPA 1970). Also, accidental results, not intended

and not appreciated, do not constitute an anticipation. *Georgia-Pacific Corp. v. United States Plywood Corp.*, 118 U.S.P.Q. 122, 128 (2nd Cir. 1958). Therefore, the withdrawal of the rejection and the allowance of claims 1-7, 12, 14-20 and 24 is respectfully requested.

In the Office Action, the Examiner rejected claim 23 under 35 U.S.C. 103(a) as being unpatentable over Newsbytes as applied to claim 21. In response, the Applicant has canceled claim 23.

CONCLUSION

For all the above reasons, the Applicant respectfully requests the reconsideration and withdrawal of the rejection and the allowance of claims 1-7, 12, 14-20 and 24.

Respectfully submitted,



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